IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1160 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KOTHI STEEL LTD

Versus

UNION OF INDIA

Appearance:
MR MIHIR H JOSHI for Petitioners
MR ASIM J PANDYA for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 17/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This order be read in the context of the order earlier passed by us on 11th July 2001.

2. Mr.Asim Pandya, learned Counsel for the respondents has submitted that there is no progress in the investigation of the case and so far as the appeal filed by the Department is concerned, the same is also pending.

3. Rule. Mr.Pandya waives service of Rule on behalf of the respondents.

4. Both the sides have requested that the matter may be finally decided and it has been submitted on behalf of the respondents that no further reply is required to be filed.

5. The petitioner-Company had paid duty of a sum of Rs.19,50,000/- for the period from Sept.1997 to March 1999 on the basis that the Furnace capacity was 3.2 MT. However, it was later on felt that it was a case of mistake and the capacity of the Furnace was required to be re-determined and for that purpose a representation was made to the Commissioner of Central Excise by the petitioner-Company. On such representation, the Commissioner of Central Excise found that in fact the capacity of the Furnace was 2.6 MT and an order was passed accordingly on 19th Feb.199, but it was mentioned that it was with prospective effect from 1.4.1999 onwards. The petitioner-Company again contested and submitted that it could not made prospective from 1.4.1999 and in fact the Furnace capacity was 2.6 MT right from beginning. Thereupon the Deputy Commissioner (Technical), Central Excise and Customs, Vadodara, vide his letter dated 11th Jan.2001 informed that the Commissioner of Central Excise, Vadodara had accepted the capacity of the Furnace in question to be 2.6 MT from Sept.1997 onwards. In this context, the petitioners' application for refund of the amount of Rs.19,50,000/- as had been moved on 18th March 1999 for the period from Sept.1997 to March 1999 which had been rejected on 8.9.1999 was set aside in appeal and the matter was remanded on 28th March 2000 for de-novo consideration. Thereafter, another order was passed on 8th Feb.2001 sanctioning the refund by the Deputy Commissioner and this sanction had already been approved by the pre-audit and also approved by the Commissioner. The Deputy Commissioner then passed an order granting refund to the petitioners and issued a cheque for the payment of the amount in question and an assurance was taken from the

petitioners that the petitioner-Company would not claim interest on the delayed payment. However, on the next date, i.e. on 9th Feb.2001, the stop payment instructions were issued to the Bank by the authorities.

6. Mr.Joshi, learned Counsel for the petitioners has submitted that the refund had been sanctioned after scrutiny of all the facts and full investigation and he could not be made to suffer merely because the figure with regard to the capacity of the Furnace had been wrongly mentioned as 3.2 MT instead of 2.6 MT. He has submitted that there is no basis for issuing the instructions for stop payment after the issue of the cheque for the amount of refund which had been duly sanctioned.

7. On behalf of the respondents, all that has been submitted before us is that, whether it was a case of simple mistake or a fraud, is being investigated and it has been submitted that the order dated 8th Feb.2001 by which the refund was sanctioned is also a subject matter of challenge in appeal and the said appeal is pending. Mr.Pandya is not in a position to give out as to within how much time the so-called investigation is going to take place nor the time for which the appeal may remain pending can be specified. Mr.Joshi has submitted that the petitioner will be duty-bound to repay the said amount of refund to the Department in case the Department succeeds against him in the ultimate analysis of the appeal which is pending. He has further submitted that the full investigation had been made prior to the issue of the cheque. In case anything comes out as a result of the further investigation which is said to be going on, subject to the petitioners' right to challenge the result of such investigation, it is open for the Department to take appropriate action in accordance with law. In this view of the matter, we find that once the cheque had been issued under a proper order of sanction with regard to refund, the stop payment instructions ought not to have been issued unless some concrete material was found. It is also not in dispute that the stop payment instructions were issued on the basis of some anonymous complaint. In any case, even if some investigation is made on that anonymous complaint and is going on, the petitioners cannot be deprived of the benefit of a valid order of refund which had been passed in favour of the petitioners. Accordingly, we find that stop payment instructions are unjustified and therefore, the respondents are directed to withdraw the instructions of stop payment and issue a fresh cheque for the amount in question immediately to the petitioners and instruct the

Bankers accordingly subject to the condition that the present petitioners furnish an undertaking before the concerned Deputy Commissioner that the petitioners shall repay the amount to the Department in case the order dated 8th Feb.2001 is finally set aside. This Special Civil Application is accordingly allowed and the Rule is made absolute with no order as to costs.

17th July 2001 (M.R. Calla, J.)

(N.G. Nandi, J.)

Sreeram.